SEOW KEH MENG v. REG.

[App. Crim. Juris. (Brown, J.) October 8, 1952]

[Singapore — Magistrate's Appeal No. 93 of 1952]

Penal Code (Cap. 20), ss. 182 and 193 — Giving false information to a public servant with intent to cause him to take action — Giving false evidence — Alternative charges — Criminal Procedure Code (Cap. 21), s. 176.

The appellant was charged in a District Court with giving false evidence contrary to section 193 of the Penal Code and in the alternative with giving false information to a public servant with intent to cause such public servant to take action which he ought not to take if the true state of facts were known to him contrary to section 182.

At the trial the prosecution proved the statement given in evidence and the statement made to the public servant, and that both statements were made by the accused. The two statements were irreconciliably contradictory but the prosecution did not lead any evidence to establish affirmatively which of the two statements was false.

The District Judge held at the trial that there could not be a conviction in the alternative and convicted on the main charge under section 193 alone. In his grounds of judgement he stated that had he been aware of the decisions in **Ramamoorthy v. Public Prosecutor**[1] and **Govindasamy v. Public Prosecutor**[2] he would have had no hesitation in convicting in the alternative.

Held, that (1) there was no evidence to show that the evidence given by the accused in the District Court was false and the conviction on the main charge under section 193 could not be upheld; and (2) the principle of convicting in the alternative without affirmative proof which of two contradictory statements is false does not apply unless the making of each statement is capable of being an offence under the same section of the Penal Code and that a conviction in the alternative under sections 182 and 193 could not be substituted.

Ramamoorthy v. Public Prosecutor[1] and **Govindasamy v. Public Prosecutor** distinguished.

Cases referred to:—

(1) *Ramamoorthy v. Public Prosecutor* (1948) M.L.J. 43.

(2) *Govindasamy v. Public Prosecutor* (1948) M.L.J. 46.

APPEAL from a Criminal District Court.

N. L. Macassey for the appellant.

A. V. Winslow (Crown Counsel) for the Crown.

Brown, J.: — In this case the appellant was charged in the alternative under section 193 and section 182 of the Penal Code. The learned Magistrate convicted him under section 193 "on the basis that the statement made by the accused in the Criminal District Court was false to his knowledge." Clearly that conviction cannot be upheld because there is no evidence that the statement made by appellant on oath in the Criminal District Court was false.

The appellant had made two statements. He made one before Mr. Gordon, which was not made on oath, in respect of which he was charged under section 182. He made another on oath in the Criminal District Court, which contradicted the first. There is no evidence to shew which was true and which was false.

If both the statements had been made on oath, or if one had been made on oath and the other had been made in the course of a Police investigation not on oath, there is ample authority for saying that he could have been charged and convicted in the alternative under section 193. *Ramamoorthy v. Public Prosecutor*[1] and *Govindasamy v. Public Prosecutor*[2]. In such a case the prosecution would not be bound to prove which of the contradictory statements was false. One or other of them must be, and which ever statement was false the accused would be guilty under section 193 and be liable to a maximum penalty of three years and a fine.

But the question here is whether the principle of convicting in the alternative can be extended to a case where the alternative charges are laid under two different sections, and whether I can substitute a conviction in the alternative for the conviction under section 193 which the learned Magistrate recorded.

I think that section 176 of the Criminal Procedure Code gave the power to lay the charges in the alternative. And if the evidence had established that the statement made to Mr. Gordon was false the Magistrate would have convicted under section 182, or if the evidence had established that the statement in Court was false he would have convicted under section 193. But as there was no evidence to shew which statement was false he could not have convicted in the alternative, because the maximum sentence of imprisonment under section 182 is six months and the maximum sentence of imprisonment under section 193 is three years. Thus it would be impossible to determine of which offence he had been convicted and in respect of which offence he should be sentenced. It seems to me that this is the distinction between *Ramamoorthy's case*, where both charges were laid under section 193 and the accused must have been guilty of one or the other each being the same offence and carrying the same sentence, and the present case where a conviction in the alternative would be for one of two different offences carrying different sentences.

The appeal must be allowed.

Appeal allowed.